

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 19-77 JOB

MICHAEL NISSEN,

Defendant.

**MOTION TO RECONSIDER DETENTION ORDER
AND REQUEST FOR HEARING**

Defendant Michael Nissen by and through his attorneys, Kenneth A. Gleria and Jack Mkhitarian, and pursuant to Rule 46 of the Federal Rules of Criminal Procedure, and Title 18 U.S.C. §3142 hereby moves the Court for its Order setting conditions of release for the Defendant, pending the final outcome of this matter, and as grounds therefore states as follows:

1. On January 11, 2019 Defendant Michael Nissen was arraigned on a 2 count January 10, 2019 Indictment charging violations of 18 U.S.C. §875(c), Interstate Communications Containing a Threat to Injure Another Person. Trial in this matter has not been scheduled.
2. At Michael Nissen's December 21, 2018 Detention Hearing, the Court denied his Motion for pretrial release. Michael Nissen currently has an arrest warrant an in *State of New Mexico v. Michael Nissen*, No. T-4-DV-2018-003159, in which he is charged with Use of Telephone to Terrify, Intimidate, Threaten, Harass, Annoy or Offend, and Harassment. The misdemeanor charges stem from the same November 2, 2018 incident charged in count one of the Indictment in the instant case. The Arrest

Warrant was issued on January 15, 2019 based on his failure to appear in court. Michael Nissen is also charged in *State of New Mexico v. Michael Nissen*, No. T-4-FR-2018-006700 with Distribution of Marijuana or Synthetic Cannabinoids. An Arrest Warrant was issued on December 21, 2018 based upon the filing of a criminal complaint in Bernalillo County Metropolitan Court. Michael Nissen was arrested in the instant on December 20, 2018 and has remained in U.S. Marshal custody in the instant case since that time. The proposed release of Michael Nissen to the La Pasada Halfway House in Albuquerque, New Mexico, will allow him the opportunity to address the pending arrest warrants in Bernalillo County Metropolitan Court. Additionally, pretrial release to the La Pasada Halfway House will allow Mr. Nissen to participate in substance abuse and mental health treatment, to become employed pending trial in this matter.

3. Defendant Michael Nissen is not an unmanageable danger to the community, and does not pose a risk of non-appearance in Court. A review of Mr. Nissen's limited prior record does not show that he has willfully failed to appear in court. Without minimizing the seriousness of the charges in the instant case, the alleged threats made by Mr. Nissen involve complaints of violation of his constitutional rights, figurative language and hyperbole. Furthermore, the discovery in the case shows that Mr. Nissen's alleged threats are not accompanied by any overt acts by him. Without minimizing the seriousness of the charges in this matter, or the Defendant's limited prior criminal record, conditions do exist for the pretrial release of Michael Nissen to the La Pasada Halfway House, which 1.) ensures the safety of the community, and 2.) ensures Mr. Nissen's appearance in Court.

Undersigned counsel has contacted the La Pasada Halfway House and determined that space is available, in the event that Mr. Nissen's release is authorized by the Court. If released, it is the intention of Mr. Nissen to obtain work.

Additionally, Michael Nissen agrees that if he is released, that he will abide by all conditions of residence at the La Pasada Halfway House, and appear in Court as required.

4 The United States, by and through its Assistant United States Attorney, Paul Mysliwiec, has been contacted regarding this matter and opposes this motion. United States Pretrial Services Officer Anthony Galaz has been contacted been contacted regarding this matter and also opposes the proposed release of Defendant Michael Nissen to the La Pasada Halfway House in Albuquerque, New Mexico.

WHEREFORE Defendant, Michael Nissen, prays that the Court authorize his release to the La Pasada Halfway House in Albuquerque, New Mexico, for the grounds and reasons set forth above, and for a hearing in this matter.

Respectfully submitted:

Electronically filed
Kenneth A. Gleria
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I HEREBY CERTIFY that a copy of the foregoing was mailed/delivered to all counsel of record, and to Anthony Galaz, USPTSO, this 23rd day of May, 2019.

Kenneth A. Gleria